

REMARKS/ARGUMENTS

Reconsideration of the captioned application as amended herewith is respectfully requested.

The Office Action:

- a) a) Alleged that the information disclosure statement filed 10 June 2005 failed to comply with 37 CFR 1.98(a)(2) ;
- b) b) Required Applicants to furnish a drawing under 37 CFR 1.81(c) ;
- c) c) Objected to claims 5 and 16 for informalities and rejected claims 5, 8, 11, 12, 16, and 19 under 35 USC §112, second paragraph;
- d) d) Rejected claims 1, 4-5, 13 – 15, and 18 – 20 under 35 USC §102(b) as allegedly being anticipated by United States Patent No. 4,541,426 to Webster ("Webster");
- e) e) Rejected claim 2 under 35 USC §103(a) as being allegedly unpatentable over Webster;
- f) f) Rejected claim 3 under 35 USC §103(a) as being allegedly unpatentable over Webster in view of United States Patent No. 5,972,452 to Takahashi, et al. ("Takahashi");
- g) g) Rejected claims 6 - 12 under 35 USC §103(a) as being allegedly unpatentable over Webster in view of United States Patent Application No. 2003/0153860 to Nielsen ("Nielsen"); and
- h) h) Rejected claims 16 - 17 under 35 USC §103(a) as being allegedly unpatentable over Webster in view of United States Patent No. 5,811,116 to Gilman, et al. ("Gilman").

Claims 1 – 20 remain pending in this application after entry of this Response.

Attached please find copies of the four WO references cited on the Form 1449 submitted with the information disclosure statement filed on 10 June 2005. Applicants respectfully request that these references, as well as the other references listed on the Form 1449, be entered into the file and considered.

The Office Action further required Applicants to "furnish a drawing under 37 CFR 1.81(c)" because the "subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention." Applicants respectfully request the Examiner to point to the specific location in the Specification where such a reference is made in order to facilitate Applicants to respond accordingly.

Claims 1 and 20 were clarified to include that “the first portion and second portion are of the same material and integrally formed in a single polymerization step,” in order to highlight a novel feature of the invention. Support for this amendment may be found in the Specification as filed at, for example, page 10, lines 6 – 9, and as such does not introduce new matter into the Specification. Applicants’ amendment herein is not a concession or admission that original claims 1 and 20 are unpatentable. Applicants reserve the right to prosecute the subject matter of original claim 1 and 20 in a continuing application.

I. The Objection of Claims 5 and 16 and the Rejection of Claims 5, 8, 11, 12, 16, and 19 Under 35 USC §112, Second Paragraph, Should Be Withdrawn

Claims 5 and 16 stand objected for informalities, and claims 5, 8, 11, 12, 16, and 19 stand rejected under 35 USC §112, second paragraph. Applicants respectfully disagree for the reasons that follow.

Claims 5, 8, 11, 12, and 16 were clarified in order to provide sufficient antecedent basis for the claimed elements. The language “and optionally one or more comonomer” was also deleted from claim 19. Applicants reserve the right to prosecute the subject matter of original claim 19 in a continuing application. Claims 5 and 16 were also amended as suggested by the Examiner to overcome the informality objections. In view of these clarifications to the claims, Applicants respectfully submit that the objection to claims 5 and 16 and the rejection of claims 5, 8, 11, 12, 16, and 19 under 35 USC §112, second paragraph, has been overcome and should be withdrawn.

II. The Rejection of Claims 1, 4-5, 13 – 15, and 18 - 20 Under 35 USC §102(b) Over Webster Should Be Withdrawn

Claims 1, 4-5, 13 – 15, and 18 - 20 stand rejected under 35 USC §102(b) as allegedly being anticipated by Webster. Applicants respectfully disagree for the reasons that follow.

Rejections under 35 USC §102 are proper only when the claimed subject matter is identically disclosed or described in the prior art. In re Marshall, 198 USPQ 344 (CCPA 1978). In other words, to constitute an anticipation, all material elements recited in a claim must be found in one unit of prior art. Id. The exclusion of a claimed element from a prior art reference is enough to negate anticipation under 35 USC §102 by that reference. Atlas Powder Co. v. E.I. Du Pont de Nemours & Co., 224 USPQ 409 (Fed. Cir. 1984). Applicants respectfully submit that Webster does not anticipate Applicants’ currently amended claim 1 and claim 20 because Webster does not describe all of those claims’ elements.

Webster describes a dressing consisting "of two layers laminated together, the first layer... is formed from a material which swells in contact with water [and the] "second layer does not swell or swells less than the first layer when in contact with water." Webster, Abstract. (emphasis added)

By contrast, the wound dressing of claim 1 and 20 comprises a "hydrogel composition comprising a first portion ... and a second portion ..., wherein the first portion and second portion are of the same material and integrally formed in a single polymerization step." (emphasis added).

Therefore, because Webster fails to disclose or suggest at least one element of Applicants' claim 1 and claim 20, i.e., e.g., a "hydrogel composition comprising a first portion ... and a second portion ..., wherein the first portion and second portion are of the same material and integrally formed in a single polymerization step." (emphasis added), Applicants respectfully submit that the rejection of claim 1 and claim 20 under 35 USC §102(b)) has been overcome and should be withdrawn. Applicants further respectfully submit that the rejection of claims 4 – 5, 13 – 15, and 18 - 19, which are dependent upon claim 1 and thus incorporate all of the limitations therein, under 35 USC §102(b) has been overcome and should similarly be withdrawn.

III. The Rejection of Claim 2 Under 35 USC §103(a) Over Webster Should Be Withdrawn

Claim 2 stands rejected under 35 USC §103(a) as allegedly being unpatentable over Webster. Applicants respectfully disagree for the reasons that follow.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations. MPEP § 2143. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, and not be based on applicant's disclosure. MPEP § 2143; *In re Vaeck*, 947 F.2d 488, 493 (Fed. Cir. 1991).

The Office Action alleges that claim 2 is obvious in light of Webster. Applicants respectfully disagree because Webster does not teach, suggest, or otherwise disclose a "hydrogel composition comprising a first portion ... and a second portion ..., wherein the first portion and

second portion are of the same material and integrally formed in a single polymerization step" (emphasis added), as described in Applicants' currently amended independent claim 1.

Claim 2 is dependent upon independent claim 1 and thus incorporates all of the limitations of claim 1 therein. In view of that fact, Applicants respectfully submit that the rejection of claim 2 under 35 USC §103(a) as allegedly being unpatentable over Webster has been overcome for the reasons set forth in Section II. herein. As such, Applicants respectfully submit that the rejection of claim 2 under 35 USC §103(a) as allegedly being unpatentable over Webster should thereby be withdrawn.

IV. The Rejection of Claim 3 Under 35 USC §103(a) Over Webster in view of Takahashi Should Be Withdrawn

Claim 3 stands rejected under 35 USC §103(a) as allegedly being unpatentable over Webster in view of Takahashi. Applicants respectfully disagree for the reasons that follow.

The Office Action has not shown where Takahashi teaches, discloses or suggests the use of a "hydrogel composition comprising a first portion ... and a second portion ..., wherein the first portion and second portion are of the same material and integrally formed in a single polymerization step," (emphasis added), as claimed in independent claim 1. Therefore, assuming *arguendo* that one skilled in the art would be motivated to combine Webster with Takahashi, Applicants respectfully submit that the resulting combination still would lack a "hydrogel composition comprising a first portion ... and a second portion ..., wherein the first portion and second portion are of the same material and integrally formed in a single polymerization step" (emphasis added), as described in Applicants' currently amended independent claim 1.

Claim 3 is dependent upon independent claim 1 and thus incorporates all of the limitations of claim 1 therein. In view of that fact, Applicants respectfully submit that the rejection of claim 3 under 35 USC §103(a) as allegedly being unpatentable over Webster in view of Takahashi has been overcome for the reasons set forth in Sections II. and IV. herein. As such, Applicants respectfully submit that the rejection of claim 3 under 35 USC §103(a) as allegedly being unpatentable over Webster in view of Takahashi should thereby be withdrawn.

V. The Rejection of Claims 6 - 12 Under 35 USC §103(a) Over Webster in view of Nielsen Should Be Withdrawn

Claims 6 - 12 stand rejected under 35 USC §103(a) as allegedly being unpatentable over Webster in view of Nielsen. Applicants respectfully disagree for the reasons that follow.

The Office Action has not shown where Nielsen discloses or suggests the use of a “hydrogel composition comprising a first portion ... and a second portion ..., wherein the first portion and second portion are of the same material and integrally formed in a single polymerization step.” (emphasis added), as claimed in independent claim 1. Therefore, assuming *arguendo* that one skilled in the art would be motivated to combine Webster with Nielsen, Applicants respectfully submit that the resulting combination still would lack a “hydrogel composition comprising a first portion ... and a second portion ..., wherein the first portion and second portion are of the same material and integrally formed in a single polymerization step” (emphasis added), as described in Applicants’ currently amended independent claim 1.

Claims 6 – 12 are dependent upon independent claim 1 and thus incorporate all of the limitations of claim 1 therein. In view of that fact, Applicants respectfully submit that the rejection of claims 6 – 12 under 35 USC §103(a) as allegedly being unpatentable over Webster in view of Nielsen has been overcome for the reasons set forth in Sections II. and V. herein. As such, Applicants respectfully submit that the rejection of claims 6 - 12 under 35 USC §103(a) as allegedly being unpatentable over Webster in view of Nielsen should thereby be withdrawn.

VI. The Rejection of Claims 16 - 17 Under 35 USC §103(a) Over Webster in view of Gilman Should Be Withdrawn

Claims 16 - 17 stand rejected under 35 USC §103(a) as allegedly being unpatentable over Webster in view of Gilman. Applicants respectfully disagree for the reasons that follow.

The Office Action has not shown where Gilman discloses or suggests the use of a “hydrogel composition comprising a first portion ... and a second portion ..., wherein the first portion and second portion are of the same material and integrally formed in a single polymerization step.” (emphasis added), as claimed in independent claim 1. Therefore, assuming *arguendo* that one skilled in the art would be motivated to combine Webster with Gilman, Applicants respectfully submit that the resulting combination still would lack a “hydrogel composition comprising a first portion ... and a second portion ..., wherein the first portion and second portion are of the same material and integrally formed in a single polymerization step” (emphasis added), as described in Applicants’ currently amended independent claim 1.

Claims 16 - 17 are dependent upon independent claim 1 and thus incorporate all of the limitations of claim 1 therein. In view of that fact, Applicants respectfully submit that the rejection of claims 16 – 17 over Webster in view of Gilman has been overcome for the reasons set forth in Sections II. and VI. herein. As such, Applicants respectfully submit that the rejection of claims 16

- 17 under 35 USC §103(a) as allegedly being unpatentable over Webster in view of Gilman should thereby be withdrawn.

Conclusion

It is submitted that the foregoing amendments and remarks place the case in condition for allowance. A notice to that effect is earnestly solicited.

In the event that all of the claims are not in condition for allowance, Applicants respectfully request for an interview with the Examiner before the preparation of the next Office Action.

Respectfully submitted,

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Att: 4 WO references cited in IDS